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12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

In re:	)	Cases Jointly Administered
	)	
<b>COMMUNITY TOWERS I, LLC,</b>	)	Case No. 11-58944-SLJ-11
A Delaware Limited Liability Company,	)	
Employer Tax I.D. No. 75-2456729,	)	
	)	
<b>COMMUNITY TOWERS II, LLC,</b>	)	Case No. 11-58945-SLJ-11
A Delaware Limited Liability Company,	)	
Employer Tax I.D. No. 75-2560662,	)	
	)	
<b>COMMUNITY TOWERS III, LLC,</b>	)	Case No. 11-58948-SLJ-11
A Delaware Limited Liability Company,	)	
Employer Tax I.D. No. 32-0065635,	)	
	)	
<b>COMMUNITY TOWERS IV, LLC,</b>	)	Case No. 11-58949-SLJ-11
A Delaware Limited Liability Company,	)	
Employer Tax I.D. No. 77-0379075,	)	
	)	Chapter 11
	)	
Debtor(s).	)	Date: August 21, 2013
	)	Time: 2:00 p.m.
111 W. Saint John Street, Suite 705	)	Place: United States Bankruptcy Court
San Jose, California 95113	)	280 S. First Street, Room 3099
	)	San Jose, CA 95113
	)	Judge: Honorable Stephen L. Johnson

28 **MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY**

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MOTION TO EXTEND DATE FOR  
TERMINATION OF AUTOMATIC STAY

Community Towers I, LLC, Community Towers II, LLC, Community Towers III, LLC and Community Towers IV, LLC (collectively, the “Debtors”) hereby submit their MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY (the “Motion”). This Motion is supported by the DECLARATION OF JOHN L. FEECE IN SUPPORT OF MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY (the “Feece Declaration”), the DECLARATION OF DONN BYRNE IN SUPPORT OF MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY (the “Byrne Declaration”), the DECLARATION OF DOUG FEECE IN SUPPORT OF MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY (the “Doug Feece Declaration”) and the DECLARATION OF ERIC MOGENSEN IN SUPPORT OF MOTION TO EXTEND DATE FOR TERMINATION OF AUTOMATIC STAY (the “Mogensen Declaration”), all of which are filed concurrently herewith.

### I. INTRODUCTION

1. By this Motion, the Debtors seek an Order from this Court extending the expiration date of the automatic stay previously set by this Court for September 1, 2013 to December 31, 2013. The purpose of this extension is twofold: 1) to permit the Debtors adequate time to proceed towards confirmation of an amended plan of reorganization; and/or 2) to afford the Debtors additional time within which to obtain refinancing or to sell of their real property in order to pay the secured claim of CIBC, Inc.

2. Although this Court denied the Debtors’ original proposed plan of reorganization by Order dated January 25, 2013, that denial was based upon the Court’s determination that the plan was not feasible in that the Debtors could not attain sufficient revenues to perform the plan during its term in light of the cramdown interest rate that the Court found to be fair and equitable.<sup>1</sup>

3. The Debtors failed to convince this Court at the confirmation hearing that their proposed plan was “feasible”. The Court reached the opinion that the Debtors had overstated the income to be received during the plan term and understated their expenses primarily with respect to tenant improvement allowances required to operate the property and leasing commissions payable to agents and brokers for new leases. [Order Denying Confirmation of Joint Plan p. 26, ll. 21-25].

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<sup>1</sup> This Court stated in its Order Denying Confirmation of Debtors’ Joint Plan, at page 14, ll. 16-17: “...the court concludes Debtors’ Plan otherwise meets the requirements for confirmation”.

1           4.       The Court has expressed its similar concern over whether the Debtors could ever  
2 achieve the income requirements to support any plan that will pay CIBC what it is owed, including  
3 at the most recent hearing in March 2013. However, the Debtors have done exactly that in their  
4 performance over the past 4 months and believe this significant upturn in their operations warrants a  
5 last chance to convince this Court that a workable plan can be confirmed.

6           5.       The Court is respectfully requested to be mindful of the epic and historic economic  
7 collapse in this country which precipitated the Debtors filing in this case. The freefall of property  
8 values coupled with the issues endured by financial institutions combined to produce a deadly  
9 cocktail for business failures. Many like John and Rosalie Feece have had their life's work  
10 dissipated into nothing by these circumstances. However, epic times call for epic remedies, and  
11 while CIBC may continue to cry that it wants its money (something the Debtors do not fault it for),  
12 the entire purpose of this Court and its attendant remedies are to permit a party a second economic  
13 life where it is at all feasible to do so.

14           6.       The Debtors have been victims of bad timing and circumstances. First, they  
15 purchased the Subject Property and built it up to a 93% occupancy only to be felled by the historic  
16 economic collapse of 2008-2010. Despite this collapse, the Debtors managed to recover and  
17 maintained effective stewardship of the Property, bringing significant value to the Property.  
18 However, the effects of the recent economic upturn were only beginning to be felt at the time of the  
19 confirmation trial. The results of the past four months are more indicative of future performance.  
20 Accordingly, the Court is respectfully requested to take a second look at the Debtors and their affairs  
21 in this Motion. They have battled against the odds to increase their profitability to the point that they  
22 believe that their proposed Amended Plan (defined below) is achievable. CIBC is not prejudiced as it  
23 is receiving contract rate interest every month and the value of their collateral is steadily increasing.  
24 The Debtors ask simply at this time that they be given an opportunity to show the Court that the  
25 proposed Amended Plan is indeed "feasible" even assuming a 7.0% or 7.5% interest rate under the  
26 law through a final confirmation process and hearing or to obtain a new loan to satisfy the interests  
27  
28

1 of CIBC on a more even playing field<sup>2</sup>.

2 **A. Jurisdictional Facts.**

3 7. Each of the Debtors is a limited liability company formed under the laws of the State  
4 of Delaware on June 1, 2006 for the purpose of acquiring that certain two building, 305,000 square  
5 foot office complex located at 111 West Saint John Street and 111 North Market Street, San Jose,  
6 California commonly known as the Community Towers (the “Subject Property”). In the ordinary  
7 course of their businesses, the Debtors utilized rents from the Subject Property as the source of  
8 working capital for their pre-petition operations. CIBC, Inc. (“CIBC”) is the holder of a first deed of  
9 trust on the Subject Property

10 8. On September 26, 2011 (the “Petition Date”), the Debtors filed their Voluntary  
11 Petitions under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their  
12 businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code<sup>3</sup>.

13 9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.  
14 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The statutory predicate for the relief  
15 sought herein is 11 U.S.C. § 105(a). Venue is proper before this Court pursuant to 28 U.S.C. §§  
16 1408 and 1409.

17 10. This Motion requests that the Court extend the deadline for termination of the  
18 automatic stay in the Debtors’ bankruptcy cases, presently set for September 1, 2013, to through and  
19 including December 31, 2013.

20 **II. RELEVANT FACTS**

21 **A. Procedural Background**

22 11. On March 27, 2012, the Debtors filed the DEBTORS’ JOINT PLAN OF REORGANIZATION  
23 (DATED MARCH 27, 2012) (as modified by the FIRST MODIFICATION TO DEBTORS’ JOINT PLAN OF  
24 REORGANIZATION (DATED MARCH 27, 2012) filed on August 31, 2012, the “Plan”).

25 \_\_\_\_\_  
26 <sup>2</sup> As will be shown below, the result of the Debtors’ increases in cash flow and an improving lending market  
27 will make more alternatives open to the Debtors than those that were present in March, 2013 when this Court afforded  
28 them the opportunity to explore a financing alternative. Unfortunately, 180 days was simply too short for the effects of  
the current operations to be significant in the market.

<sup>3</sup> All statutory references herein are to the title 11, United States Code (the “Bankruptcy Code”) unless  
otherwise specified.

1           12.     The Court held a two-day evidentiary hearing on confirmation of the Plan, on October  
2 15 and 16, 2012 (the “Confirmation Hearing”).

3           13.     The only evidence in the record of the Confirmation Hearing on the value of the  
4 Subject Property was an appraisal made by Donn Byrne of Colliers International, who opined that  
5 the Subject Property had a fair market value of \$41,000,000 as of October 31, 2011. [See Debtors’  
6 Exhibit 12 submitted at the Confirmation Hearing].

7           14.     On December 12, 2012, the Debtors filed the SECOND MOTION FOR ORDER  
8 APPROVING USE OF CASH COLLATERAL (the “Second Cash Collateral Motion”) and supporting  
9 DECLARATION OF DONN H. BYRNE, JR. IN Support OF DEBTORS’ SECOND MOTION APPROVING USE  
10 OF CASH COLLATERAL which attaches an updated appraisal that states, *inter alia*, Mr. Byrne’s  
11 opinion that the Subject Property was worth \$44,000,000 as of October 1, 2012.

12           15.     On January 25, 2013, the Court entered its ORDER DENYING CONFIRMATION OF  
13 DEBTORS’ JOINT PLAN [Docket No. 251] (the “Confirmation Denial Order”), denying confirmation  
14 of the Plan. Among other things, the Confirmation Denial Order found:

15                   a)     The Debtors’ gross revenue used by their expert (“Rodriguez”) was overstated  
16 because he relied on new leases being signed at \$1.70 per square foot but the average for 2012 leases  
17 was \$1.53 per square foot with the most common rental rate at \$1.65 per square foot [Confirmation  
18 Denial Order, § I-WW];

19                   b)     The Debtors’ projected tenant improvements (“TIs”) and lease commissions  
20 (“LCs”) of \$540,000 were significantly understated. CIBC’s expert concluded that combined TIs  
21 and LCs averaged \$1.35 million per year during the six-year pre-petition period. Combined TIs and  
22 LCs averaged out to \$1.8 million per year during the bankruptcy cases [Confirmation Denial Order,  
23 § I-ZZ];

24                   c)     The Debtors’ projected operating income for 2013 of \$5,149,300, with  
25 operating expenses of \$1,978,242.10, resulting in an expense rate of 38.4%, was overstated  
26 [Confirmation Denial Order, §§ I-AAA through I-CCC];

27                   d)     The projected terminal value of the Subject Property estimated by Rodriguez  
28 at \$47,511,082 was erroneously overstated and should have been estimated at \$39,652,000

1 [Confirmation Denial Order, §§ I-EEE to I-FFF]; and

2 e) The appropriate rate of interest to be accorded to CIBC's secured claim should  
3 be 7.25% [Confirmation Denial Order, § I-JJJ].

4 16. In addition, the Confirmation Denial Order discusses in depth CIBC's claim and the  
5 Debtors' arguments why the claim is overstated. Ultimately, the Court found that CIBC is not  
6 entitled to default interest on its claim in the bankruptcy cases, and it estimated CIBC's claim at  
7 \$37,234,279.20.

8 17. On February 19, 2013, CIBC filed its SECOND MOTION FOR STAY RELIEF requesting  
9 that the Court lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(3) so that it may  
10 "proceed with its rights and remedies as a secured creditor of the Debtors." On March 3, 2013, the  
11 Debtors filed the DEBTORS' OPPOSITION TO CIBC'S SECOND MOTION FOR STAY RELIEF [Dkt. No.  
12 264] (the "Opposition to Stay Relief") contending, *inter alia*, that sec. 362(d)(3) was inapplicable as  
13 the Debtors had fully complied with the statute and that there was no "cause" to lift the automatic  
14 stay because CIBC remained adequately protected by an equity cushion of at least \$4 million as the  
15 value of the Subject Property continues to increase.<sup>4</sup> In addition, the Debtors indicated that they  
16 were pursuing refinance and sale opportunities pursuant to which the Debtors would satisfy CIBC's  
17 allowed secured claim through a sale or a debt/equity transaction.

18 18. After a hearing on March 5, 2013, the Court entered its ORDER CONDITIONALLY  
19 GRANTING CIBC INC.'S SECOND MOTION FOR STAY RELIEF (the "Conditional Stay Order")  
20 increasing the adequate protection payments to be paid by the Debtors to CIBC and providing,  
21 among other things, that the automatic stay provided under 11 U.S.C. § 362(a) will be lifted if the  
22 Debtors fail to pay CIBC all amounts allowed in connection with its secured claims in the  
23 bankruptcy cases, by September 1, 2013.

24 **B. Factual Background**

25 19. Since the Confirmation Hearing, the Debtors have continued to operate their

26  
27 <sup>4</sup> The Opposition to Stay Relief details how CIBC is adequately protected and how relief from stay is  
28 unwarranted. As set forth herein, since the Opposition to Stay Relief was filed, the Debtors have made adequate  
protection payments at the contract rate to CIBC, and the Subject Property has increased in value. Thus, CIBC is even  
more adequately protected at this time.

1 businesses and have timely made all adequate protection payments at the full contract rate to CIBC  
2 as required under the Conditional Stay Order, while increasing the profitability of their business.

3 20. Among other operational improvements, the Debtors have accomplished the  
4 following:

5 a) The Debtors have signed new leases and have increased the overall occupancy  
6 rate to over 95%. The majority of the leases for the buildings are now for longer than the 3-year  
7 period of term. [See Declaration of Doug Feece, Exhibit "B" to Declaration of Doug Feece];

8 b) TIs and LCs are substantially reduced based upon the fact that the majority of  
9 leases at this juncture will be renewals of recent leases (in which the TI work was already completed  
10 in the initial term), thereby reducing both the commissions payable and the TIs required to maintain  
11 the tenant in the space. [See Declaration of Doug Feece, para. 6, 8, Declaration of John Feece para.  
12 20-21]. A true and correct copy of the Debtors' most recent projections for the period from 2013  
13 through December 2017 (the "July 2013 Projections") is attached to the Declaration of John Feece as  
14 its Exhibit "B" and is incorporated herein by this reference;

15 c) As a result of current leasing conditions and reduced operating expenses, the  
16 Debtors projected operating income has increased dramatically and indeed surpasses the projections  
17 this Court felt were "overstated" at the Confirmation Hearing - the difference being that the current  
18 state of operations now support the projections.

19 21. The value of the Subject Property has increased significantly based upon the increase  
20 in occupancy, the Debtors' improvement in operations, and continually improving market  
21 conditions. Mr. Byrne has completed an updated appraisal which states, *inter alia*, Mr. Byrne's  
22 opinion that the Subject Property was worth **\$46,000,000** as of February 28, 2013. A true and  
23 correct copy of such appraisal is attached to the Byrne Declaration as Exhibit "B" and is  
24 incorporated herein by this reference.

25 22. The Debtors have worked and continue to work diligently in seeking alternate lenders  
26 for the Subject Property as well as potential buyers and investors for the Subject Property. The  
27 Debtors have received several term sheets for refinancing and have communicated such refinance  
28 opportunities to CIBC. However, because of the recent developments and the upward trending of



1 the Debtors' profits from operations, the Debtors believe that more opportunities will be available in  
2 the next few months provided the Debtors have the time to use the latest developments as part of the  
3 lending process. The Debtors believe that sales opportunities will increase once the "deadline" of  
4 September 1, 2013 is extended and is not used as a leverage point by potential buyers.[Mogensen  
5 Declaration para. 7; John Feece Declaration para. 11].

6 23. The Debtors have informally approached CIBC with proposals for a reduced payoff  
7 based upon the financing efforts they are engaged in. CIBC has not responded to these proposals.  
8 The Debtors also have reached out to CIBC on multiple occasions in an attempt to reach agreement  
9 on a payoff number, but again CIBC has not responded. [John Feece Declaration, para 11]. In the  
10 event the Court grants the relief requested in this Motion, the Debtors intend to seek more formal  
11 discussions through counsel and perhaps a mediation effort.

12 24. Notwithstanding any opportunities for refinance and/or to sell the Subject Property,  
13 the Debtors believe that conditions have evolved so that the Debtors are now able to propose and  
14 likely confirm a plan for their reorganization. Accordingly, they respectfully request an extension of  
15 the date on which the automatic stay will terminate in order to allow them additional time to seek  
16 confirmation of the Amended Plan, or to obtain financing or a sale of the property to satisfy the  
17 secured claim of CIBC.

### 18 III. DISCUSSION

#### 19 A. The Automatic Stay.

20 25. It is axiomatic to the bankruptcy process that the debtor be permitted a fresh start and  
21 the opportunity to reorganize its affairs. Consequently, the automatic stay established under section  
22 362(a) is fundamental to the bankruptcy process. *See In re Peregrine Systems, Inc.*, 314 B.R. 31, 44  
23 (Bankr. D. Del. 2004) *aff'd in part, rev'd in part on other grounds, AW Treuhand*  
24 *Wirtschaftsprufungsgesellschaft v. Peregrine Sys. (In re Peregrine Sys.)*, 2005 U.S. Dist. LEXIS  
25 21707 (D. Del. Sept. 29, 2005) (automatic stay is a "fundamental protection provided to a debtor for  
26 the purpose of stopping all creditor collection efforts and harassment of the debtor and to provide ...  
27 a fresh start."). The stay not only protects the debtor, but also creditors. *Shaw v. Ehrlich*, 294 B.R.  
28 260, 267 (W.D. Va. 2003), *aff'd*, 99 Fed. Appx. 466 (4th Cir. 2004) ("stay protects debtors, as well



1 as creditors, by providing debtors a breathing spell from collection efforts”). This is because the stay  
2 protects the bankruptcy estate’s assets while enabling an equitable distribution of the estate for the  
3 benefit of all creditors. *See Reliant Energy Services, Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825  
4 (5th Cir. 2003) (“purposes of the bankruptcy stay ‘are to protect the debtor’s assets, provide  
5 temporary relief from creditors, and further equity of distribution among the creditors by forestalling  
6 a race to the courthouse.’”) (*quoting GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716  
7 (5th Cir. 1985)); *Mann v. Chase Manhattan Mortgage Corp.*, 316 F.3d 1, 3 (1st Cir. 2003)  
8 (“automatic stay provision is designed to defend against the disorderly, piecemeal dismemberment  
9 of the debtor’s estate outside the bankruptcy proceedings”).

10 **B. 11 U.S.C. § 105(a).**

11 26. Given that the automatic stay is integral to every bankruptcy case, it is not surprising  
12 that bankruptcy courts have invoked their equitable powers under sec. 105(a)<sup>5</sup> to continue the stay  
13 for various reasons. *Bank Hapoalim B.M., Chicago Branch v. E.L.I., Ltd.*, 42 B.R. 376, 378 (N.D. Ill.  
14 1984). *See also, e.g., In re Medical Plaza Associates, Ltd.*, 67 B.R. 879 (W.D. Mo. 1986) (extending  
15 automatic stay beyond 30-day limit imposed by sec. 362(e) in single asset real estate case, where  
16 termination of stay would permit foreclosure leading to irreparable harm to debtor, unsecured  
17 creditors, and equity security holders; *In re Mendez*, 464 B.R. 63, 66 (Bankr. D. Mass. 2011)  
18 (invoking sec. 105 in a case which had been administratively closed under sec. 350(a) to afford “all  
19 parties the most equitable and all-encompassing relief possible in the circumstances.”). Courts also  
20 have invoked sec. 105(a) as a basis for injunctive relief where the stay has already terminated. *In re*  
21 *Wedgewood Realty Group, Ltd.*, 878 F.2d 693, 701 (3d Cir. 1989) (“Section 105(a) should be  
22 considered as a safety net by which actions against the bankrupt estate may be enjoined when the  
23 automatic stay has terminated but the equities support appropriate injunctive relief.”). Further,  
24 Courts have even looked to sec. 105(a) to increase the reach of the automatic stay to cover non-  
25 debtor parties in certain circumstances. *See e.g., In re All Seasons Resorts, Inc.*, 79 B.R. 901, 904  
26 (Bankr. C.D. Cal. 1987).

27  
28 <sup>5</sup> Sec. 105(a), titled “Power of the Court” provides in part: “The court may issue any order, process, or  
judgment that is necessary or appropriate to carry out the provisions of this title...”

1           27. As set forth below, the Debtors' current operations as well as improving market  
2 conditions indicate that the Debtors will likely be able to confirm an amended plan which pays all  
3 creditor claims, including CIBC's secured claim within three years.<sup>6</sup> Based on the facts which have  
4 evolved during the bankruptcy cases<sup>7</sup>, in combination with the Bankruptcy Code's compelling  
5 policy to permit the Debtors' to reorganize and facilitate an equitable administration of the estates  
6 for the benefit of all creditors, the Debtors respectfully submit that the Court should invoke its  
7 powers under sec. 105(a) to extend the automatic stay.

8           28. As further support for the exercise of this Court's discretion in extending the  
9 automatic stay, the Debtors note that in individual debtor cases, § 362(c)(3)(A) limits the duration of  
10 the automatic stay to 30-days for re-filing debtors who had a pending case dismissed within the 1-  
11 year preceding. § 362(c)(3)(B) permits an extension of the stay if the certain requirements are met  
12 including, *inter alia*, the debtor proves that the filing of the new case "is in good faith as to the  
13 creditors to be stayed." § 362(c)(3)(C)(i)(III) provides a presumption that a re-filed case is in bad  
14 faith which is rebutted if there has been a substantial change in a debtor's financial affairs since  
15 dismissal of the prior case, or if there is any other reason to conclude the case will be concluded with  
16 a confirmed plan that will be fully performed. *In re Castaneda*, 342 B.R. 90 (Bankr. S.D. Cal. 2006).  
17 Thus, in the context of individual bankruptcy cases, courts have extended the automatic stay where a  
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19 <sup>6</sup> Because the stay has not yet been terminated, this Motion does not examine the tests for injunctive relief  
20 which courts typically apply in the instance when a party seeks to reinstitute an automatic stay which has terminated. In  
21 California, "[t]he traditional equitable criteria for granting preliminary injunctive relief are (1) a strong likelihood of  
22 success on the merits, (2) the possibility of irreparable injury to plaintiff if the preliminary relief is not granted, (3) a  
23 balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases)'... The criteria  
24 traditionally are treated as alternative tests. 'Alternatively, a court may issue a preliminary injunction if the moving party  
25 demonstrates 'either a combination of probable success on the merits and the possibility of irreparable injury or that  
26 serious questions are raised and the balance of hardships tips sharply in his favor.'" *Ostrander v. Fremont Inv. & Loan*,  
27 2009 U.S. Dist. LEXIS 37815, \*4-5 (E.D. Cal. May 4, 2009) (citations omitted). Even if applied here, the hardship and  
28 level of irreparable injury confronting the Debtors is unquestionable, and the public interest criterion – to reinforce the  
goal of the bankruptcy process and to reach an equitable result for the benefit of all creditors - also strongly favors the  
Debtors. Thus, the only criterion in question is the likelihood of the Debtors' success in confirming a Plan which is  
discussed herein.

It is important to note that the facts set forth herein which depict the current status of the Debtors align in large  
part with the Debtors' projections with respect to the Plan. As such, the Motion (and the Debtors' amended Plan) are not  
advanced with the benefit of hindsight but instead are based on circumstances which the Debtors previously anticipated  
and have become reality. This is especially important because the Court's findings in the Confirmation Denial Order,  
and CIBC's arguments at the Confirmation Hearing, were based largely on the Debtors' historical performance during  
the pendency of the bankruptcy cases. As the Debtors projected during that period, and as demonstrated herein, the  
Debtors' operations and financial position would improve as the Debtors progressed toward stability.

debtor's financial affairs, including for example, an increase in income, have improved. *E.g.*, *Castaneda*, 342 B.R. at 95.

**C. The Circumstances Of These Cases Warrant Extending The Stay.**

29. Once again, the Debtors point out that the economic factors which caused the epic economic collapse in this country from 2009 through 2012 are truly extraordinary. The Debtors have taken the brunt of this blow yet have rebounded mightily over the first half of 2013. The Debtors are prepared to and are able to provide adequate protection payments to CIBC for the extended term at the contract rate of 7%, a rate which is in excess of the market rate at this time. [See Mogensen Declaration, para. 4]. The likelihood of the Debtors locating sufficient financing to pay off CIBC is evident.

30. Even if a sale or refinance is not accomplished in the extended term, the Debtors believe they can obtain confirmation of a plan through the Court. The Debtors have attached as Exhibit "A" to the Feece Declaration a copy of a draft of the DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION (DATED JULY 22, 2013) (the "Amended Plan") which the Debtors anticipate will be filed in substantially the form thereof, which has been amended to reflect the actual current market conditions of the Subject Property and the Debtors' operations. As set forth therein, the Amended Plan proposes to amend the original plan by, among other things:

- a) Reducing the overall length of the Plan from 5 years to 3 years;
- b) Providing for monthly payments during the term of the Plan to CIBC of full contract rate interest (7.00%) and payment of its allowed secured claim (as determined by the Court) in full with interest at 7.00% (or at a rate otherwise determined by the Court) within the three-year term from the Plan Effective Date;
- c) Conversion of the debt owed to John and Rosalie Feece to ownership interests in the Debtors, and contribution of resulting capital to fund the Debtors' operations; and
- d) Deferral of all leasing commissions by the Debtors' leasing agent until payment in full of the claim of CIBC.

31. The Debtors' July 2013 Projections fully demonstrate that the Amended Plan is likely

1 to be confirmed.<sup>8</sup> First, as illustrated by the schedule attached to the Doug Feece Declaration, the  
2 Debtors have now reached 95% overall occupancy in the two buildings combined. As Mr. Feece  
3 details in his Declaration, the Debtors' historical lease renewal rate is 90-95%. Thus, it is reasonable  
4 to assume that at least 90% of the leases that come up for renewal during the term of the Amended  
5 Plan will renew on terms that will not be less than the initial lease terms. Furthermore, as lease  
6 renewals, they will not require tenant improvements nor will they incur lease commissions. [Doug  
7 Feece Declaration, paras 6 - 8]. The Debtors' occupancy rate will remain stable throughout the plan  
8 period.

9 32. In addition, the Amended Plan proposes payment of interest to CIBC at the contract  
10 rate of 7.00%. The Court has already determined that a 7.25% rate is appropriate for the five-year  
11 term originally proposed in the Plan. In light of the fact that the Debtors' financial position has  
12 improved since the Confirmation Hearing and that the Amended Plan proposes payment over three  
13 years, the risk under the Plan to CIBC is reduced, and the Debtors submit that 7.00% interest  
14 payments are appropriate. This proposed rate, of course, is subject to the Court's determination at  
15 confirmation. However, even at 7.25%, the July 2013 Projections indicate that the Debtors will be  
16 able to perform their obligations under the Plan.

17 33. For example, even if CIBC's claim were to be allowed in full with the exception of  
18 the default interest to which it is not permitted, the claim would approximate at most \$41,090,000<sup>9</sup>.  
19 The July 2013 Projections indicate the Debtors' net operating profit of \$3,729,601 million in 2014,  
20 \$3,813,454 million in 2015 and \$3,947,975 million in 2016. Payments to CIBC at an interest rate of  
21 7.25% would amount to \$2,979,025.00 annually. Consequently, the Debtors could service CIBC's  
22 debt at 7.25% if required to do so, and still retain \$750,576.00 in net profit for 2014,

23 <sup>8</sup> As the Court is aware, feasibility under sec. 1129(a)(11) requires only a showing that a plan  
24 has a "reasonable probability of success" and is not a "visionary scheme." *In re Acequia Inc.*, 787 F.2d 1352, 1364 (9th  
Cir. 1986).

25 <sup>9</sup> CIBC's MOTION TO DISMISS THE DEBTORS' CLAIM OBJECTIONS FOR WANT OF PROSECUTION filed on June 9,  
26 2013, estimated its claim including default interest, late charges and attorneys' fees, at \$44,390,000. *See* CIBC's BRIEF  
27 IN SUPPORT OF ITS MOTION TO DISMISS THE DEBTORS' CLAIM OBJECTIONS FOR WANT OF PROSECUTION [Dkt. No. 285],  
p. 4, lines 13-14, and n. 2. Paragraph 12 of the Rider to CIBC's Proofs of Claim Nos. 4, 5, 6 and 7 assert default interest  
28 of \$3,303,500.00 as of the Petition Date. As of the date of this Motion, the Debtors' OBJECTIONS TO PROOFS OF CLAIM  
NOS. 4, 5 6 AND 7 (CIBC, INC.) remain pending, and the Debtors reserve their rights to object to CIBC's claims and to  
assert affirmative claims against CIBC.

1 \$834,429,000.00 in net profit in 2015, and \$968,950.00 in net profit for 2016.

2 34. Finally, the Debtors' operations since March 2013 provide the most relevant sample  
3 from which to project the Debtors' performance as proposed under the Amended Plan. Since that  
4 date, the Debtors have been making 7.00% adequate protection payments to CIBC, have entered into  
5 the new leases reflected in the current rent roll (attached as Exhibit "A" to the Doug Feece  
6 Declaration), and have reduced costs to the levels set forth in the July 2013 Projections. During the  
7 period from March 2013, the Debtors' operations have considerably improved, reflecting Net  
8 Operating Profits of \$162,288 for March, \$173,019.00 for April 2013, and \$186,966.00 for May  
9 2013. Moreover, this analysis does not take into account the rapidly appreciating value of the  
10 Subject Property which increased \$5,000,000.00 since October of 2011 and will continue to grow  
11 during the term of the Plan.

12 35. The Debtors' Monthly Operating Reports since March, 2013 in conjunction with the  
13 July 2013 Projections demonstrate that while cash reserves have not decreased and will not decrease,  
14 the Debtors have been making and will be able to continue to make adequate protection payments to  
15 CIBC indefinitely. Therefore, CIBC will not be prejudiced for the short extension term requested by  
16 this Motion while the Debtors continue to improve operations and proceed forward with  
17 confirmation of the proposed Amended Plan or an alternative refinance/sale of the Subject Property.

18 **WHEREFORE**, the Debtors respectfully request that this Court enter its Order:

19 1. Granting the Motion;

20 2. Extending the automatic stay under sec. 362(a) in the Debtors' bankruptcy cases to  
21 through and including the 30th day following a final decision by the Court on confirmation of the  
22 Debtors' amended plan of reorganization or a date certain as determined by the Court; and

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3. For such other relief as the Court deems proper and just.

**DORSEY & WHITNEY LLP**

and,

**LAW OFFICES OF WILLIAM L. CONTI**

Dated: July 23, 2013

By: /s/ William L. Conti  
William L. Conti  
Litigation Counsel for Debtors